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Access to National Geospatial-Intelligence Agency Records: Commercial Sources, the Freedom of Information Act and the Privacy Act

This handbook tells you how to request records from the National Geospatial-Intelligence Agency (NGA) and offers basic information on the Freedom of Information Act (FOIA) and the Privacy Act. This handbook covers how to submit FOIA and Privacy Act requests, where to send them, some of the types of information available, highlights some of the issues that affect response and notes some data that may be withheld from public release. Questions may be addressed to Office of General Counsel, Attention: FOIA Officer, National Geospatial-Intelligence Agency (NGA/OGC), Mail Stop D-10, 4600 Sangamore Road, Bethesda, Maryland, 20816-5003, phone 301-227-2268, facsimile 301-227-2035.

NGA provides information and records through many channels:

The **Congressional and Public Liaison Office** accepts non-FOIA requests from the news media. Their address is: National Geospatial-Intelligence Agency (NGA/OCR), Attention: Congressional and Public Liaison Office, Mail Stop D-111, 4600 Sangamore Road, Bethesda, Maryland 20816.

Some NGA records and products are electronically available via the World Wide Web (WWW); See, www.NGA.mil.

Some NGA records and products are offered for sale and may be purchased from the following sources:

Charts-Maps

National Geospatial-Intelligence Agency, Dissemination Division
4600 Sangamore Road
Bethesda, MD 20816-5003 (call 301-227-2495 or 1-800-826-0342)

National Ocean Service (NOS)
Distribution Branch N/ACC3
6501 Lafayette Avenue
Riverdale, MD 20737-1199 (call 1-800-638-8972)

US Geological Survey (USGS) Information Services
Box 25286
Denver, CO 80225 (call 1-888-ASK-USGS; see website www.usgs.gov/pubprod/index.html)

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Imagery

Customer Services, US Geological Survey (USGS)

EROS Data Center

Sioux Falls, SD 57198(call 605-594-6151; email: custserv@edcmail.cr.usgs.gov)

The FREEDOM OF INFORMATION ACT (FOIA) and The PRIVACY ACT

The FOIA, enacted in 1966, generally provides that any person has a right of access to Federal agency records. This right of access is enforceable in court except for those records that are protected from disclosure by the nine exemptions to the FOIA. Closely related to the Freedom of Information Act is the Privacy Act, another Federal law regarding Federal government records. The Privacy Act establishes certain controls over how the executive branch agencies of the Federal government gather, maintain, and disseminate personal information. The Privacy Act can also be used to obtain access to information, but it pertains only to records the Federal government keeps on individual citizens and lawfully admitted resident aliens. The FOIA, on the other hand, covers all records under the custody and control of Federal executive branch agencies.

Common Questions on the Freedom of Information Act

What information is available under the FOIA?

The FOIA provides access to Federal agency records, except those which are protected from release by nine specific exemptions (reasons an agency may withhold records from a requester). The exemptions cover (1) classified national defense and foreign relations information, (2) internal agency personnel rules and practices, (3) material prohibited from disclosure by another law, (4) trade secrets and other confidential business information, (5) certain interagency or intra-agency communications, (6) personnel, medical, and other files involving personal privacy, (7) certain records compiled for law enforcement purposes, (8) matters relating to the supervision of financial institutions, and (9) geological information on oil wells.

The FOIA does not apply to Congress or the courts, nor does it apply to records of state or local governments. The FOIA does not require a private organization or business to release any information directly to the public, whether it has been submitted to the government or not. Information submitted by private firms to the Federal government may be available through a FOIA request provided that the information is not a trade secret, confidential business information, or protected by some other exemption. Assessing information that originally came from outside the Government in order to determine if an exemption applies, and permitting the submitter of the information to comment on the potential release of the requested data takes time. FOIA requests for records containing information submitted from outside the Agency take longer to process than requests for records containing only releasable Government data.

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Federal law allows the withholding of certain NGA information considered to be "limited distribution." The specific statute, 10 U.S.C. §455, titled "Maps, charts, and geodetic data: public availability; exceptions," provides that the Secretary of Defense may withhold from public disclosure any geodetic product in the possession of, or under the control of, the Department of Defense

(1) that was obtained or produced, or that contains information that was provided, pursuant to an international agreement that restricts disclosure of such product or information to government officials the agreeing parties or that restricts use of such product or information to government purposes only;

(2) that contains information that the Secretary of Defense has determined in writing would, if disclosed, reveal sources and methods, or capabilities, used to obtain source material for production of the geodetic product; or

(3) that contains information that the Director of the National Geospatial-Intelligence Agency has determined in writing would, if disclosed, jeopardize or interfere with ongoing military or intelligence operations or reveal military operational or contingency plans.

Under the FOIA, you may request and receive a copy of any record that is in an agency's official files which is not covered by one of the exemptions. When you make a FOIA request, you must specifically describe the material you want. If your request is too general or vague, the agency may not be able to respond to your request. Also, the FOIA does not require agencies to do research for you, to create a record, to compile or analyze data, or to answer questions.

How do I request information under the FOIA?

Write a letter of request to the NGA Office of the General Counsel. Identify the records you want as accurately as possible; your request must reasonably describe the records sought. Any information that you can furnish about the time, place, persons, events, subjects, or other details on the information or records you seek will be helpful to agency personnel in deciding where to search and in determining which records you want. This can save you and the government time and money and also improve your prospects for getting the records requested.

What about costs for getting records under the FOIA?

The law permits the Agency to charge fees based on the category of the requester. Commercial requesters pay search, review and reproduction costs over \$15.00. News media and educational or noncommercial scientific institutions pay reproduction costs after the first 100 pages. Other noncommercial requesters get the first two hours of search time and the first 100 pages free of charge. NGA automatically waives costs of \$15 or less for a single FOIA request. If fees are charged, you may request a waiver or reduction of fees. The Agency may grant the waiver or reduction if you can show that release will contribute significantly to the public understanding of the activities of the government and is not primarily in your commercial interest.

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How long will it take to answer my request?

Federal agencies are required to answer your request for information within 20 working days of receipt (excluding Saturdays, Sundays, and holidays). If you have not received a reply by the end of that time (be sure to allow for mailing time), you may write a follow-up letter or telephone the agency to ask about the delay. Sometimes an agency may need more than 20 working days to find the records, examine them, possibly consult other persons or agencies, and decide whether it will disclose the records requested. If so, the agency is required to inform you. The NGA receives a number of requests, some of which involve massive numbers of pages or require particular care to process correctly. The Agency ordinarily handles the pending case file on a first-come, first-served basis and may not respond to all requests within the statutory period. Simple requests often can be answered within the 20 working day time period if the requested record is readily available. More complex actions, seeking voluminous records from many locations, especially those involving classified materials or evolving policy issues or access to technology will take longer, particularly if NGA elements must coordinate with outside organizations.

Requesters may seek expedited processing of their requests if they can demonstrate a ***compelling need*** for the information. **Compelling need** means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

Compelling need also means that the information is ***urgently needed*** by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. An individual primarily engaged in disseminating information means a person whose primary activity involves disseminating information to the public. The news media would normally qualify as individuals primarily engaged in disseminating information. Other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public.

Urgently needed means that the information has a particular value that will be lost if not disseminated quickly. Ordinarily, this means a breaking news story of general public interest. Information of historical interest, or sought for litigation or commercial activities will not qualify, nor will a broadcast deadline unrelated to the news breaking nature of the information.

A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of his or her knowledge.

Other reasons that merit expedited processing are an imminent loss of substantial due process rights and humanitarian need. A demonstration of imminent loss of substantial due process rights shall be made by a statement certified by the requester to be true and correct to the best of his or her knowledge. Humanitarian need means that disclosing the information will promote the welfare and interests of mankind. A demonstration of humanitarian need shall be also made by a statement certified by the requester to be true and correct to the best of his or her knowledge. Both statements mentioned above must accompany the request. Once the decision has been made to expedite the request for either of these reasons, the request may be processed in the expedited processing queue behind those requests qualifying for compelling need.

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What happens if the agency refuses to give me the information?

An agency ordinarily will deny a FOIA request, in whole or in part, if it has a legal reason for denial (an exemption). If an agency denies your request, it must be able to prove that the information is covered by one of the nine exemptions listed in the Act. The agency must give you the reason (the exemption) for denial in writing and inform you of your right to appeal the decision. Appeals should be addressed to: Office of General Counsel, Attention: FOIA Officer, National Geospatial-Intelligence Agency (NGA/OGC), Mail Stop D-10, 4600 Sangamore Road, Bethesda, Maryland, 20816-5003, phone 301-227-2268, facsimile 301-227-2035. The NGA Appellate Authority is responsible for appeal decisions.

What can I do if my appeal is rejected?

If the NGA Appellate Authority denies your appeal, you may take the matter to court. In court, the agency will have to prove that the withheld records, or the withheld portions of them, are covered by one of the exemptions listed in the Act.

Common Questions on the Privacy Act

What is the Privacy Act?

The Federal government compiles a wide range of information on individuals. For example, if you were in the military or employed by a Federal agency, there should be records of your service. If you have applied for a Federal grant or received a student loan guaranteed by the government, you are probably the subject of a file. There are records on every individual who has paid income taxes or received a check from Social Security or Medicare.

The Privacy Act, passed by Congress in 1974, establishes certain controls over what personal information the Federal government collects and how it is used. The Act guarantees three primary rights: (1) the right to see records about yourself, subject to the Privacy Act's exemptions, (2) the right to request that the record be amended if it is inaccurate, irrelevant, untimely, or incomplete, and (3) the right to sue the government for violations of the statute including permitting others to see your records unless permitted by the Act.

It also provides for certain limitations on agency information practices, such as requiring that information about you be collected from you to the greatest extent practicable; and requiring agencies to ensure that their records are relevant, accurate, timely, and complete.

What information may I request under the Privacy Act?

The Privacy Act applies only to: (1) documents about individuals maintained by agencies in the executive branch of the Federal government; and (2) that are in a "system of records." In a system of records, your records are retrieved by your name, social security number, or some other personal identifier. In other words, the Privacy Act does not apply to

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information about individuals in records that are retrieved by subject, such as by organization name or event name or date. Like the FOIA, the Privacy Act applies to records held by Federal agencies.

There are 10 exemptions to the Privacy Act under which an agency can withhold certain kinds of information. Examples of exempt records are those containing classified information on national security or those concerning criminal investigations.

How do I know if an agency has a file on me?

If you think a particular agency has a file pertaining to you, you may write to the agency. Agencies are generally required to inform you, upon request, whether or not they have files on you. In addition, agencies are required to report publicly the existence of all systems of records they keep on individuals. The Office of the Federal Register publishes a listing of each agency's systems of records notices, including exemptions, as well as its Privacy Act regulations.

How do I request information under the Privacy Act?

Write a letter to the address below if you believe NGA may have a file pertaining to you. NGA requires some proof of identity before releasing your records. You should enclose proof of identity, such as, a copy of your driver's license with your full name and address, an employee identification card, or a Medicare card. Do not send the original documents. Remember to sign your request for information, since your signature is a form of identification. State that the information in your letter (to include your assertion of your identity) is true, under penalty of perjury. You may choose to have your signature notarized. If the agency needs more proof of identity before releasing your files, it will let you know. Give as much information as possible as to why you think the agency has records about you. The agency will process your request or contact you for more information.

Where in NGA do I send my request?

Privacy Act requests seeking NGA records may be sent to the NGA office that holds the records. If you do not know which office holds the records, send your request to the Office of the General Counsel, National Geospatial-Intelligence Agency (NGA/OGC), Mail Stop D-10, 4600 Sangamore Road, Bethesda, Maryland, 20816-5003, phone 301-227-2268, facsimile 301-227-2035 or National Geospatial-Intelligence Agency (NGA/OGC), Mail Stop L-32, 3200 South Second St., St. Louis, MO 63118.

What about costs for getting records under the Privacy Act?

Under the Privacy Act, an agency may charge only for the cost of copying records for you, not for time spent locating them.

How long will it take to answer my request?

NGA policy is to acknowledge all requests upon receipt. You will normally get a decision within 20 working days.

A Comparison of the Freedom of Information Act and the Privacy Act

What is the relationship between FOIA and the Privacy Act?

Although the two laws were enacted for different purposes, there is some similarity in their provisions. Both the FOIA and the Privacy Act give people the right of access to records held by agencies of the Federal government. The FOIA's access rights are given to "any person," but the Privacy Act's access rights are only for U.S. citizens and lawfully admitted aliens for permanent residence. The FOIA applies to all records of Federal agencies. The Privacy Act applies only to Federal agency records in "systems of records" which contain information about an individual and are retrieved by the use of a name or personal identifier. Each law has a different set of fees, time limits, and exemptions from its rights of access. If you request records about yourself under both laws, Federal agencies may withhold the records from you only to the extent the records are exempt under both laws.

Can I request information about other people?

The FOIA's Exemption 6 permits an agency to withhold information about individuals if disclosing it would be a "clearly unwarranted invasion of personal privacy." This includes, for example, information in medical files and personnel files. In addition, because NGA is an element of the Intelligence Community, certain personnel and organizational information may be withheld from release under a Federal statute, 10 U.S.C. § 424 (1996).

The FOIA's Exemption 6 cannot be used to deny you access to information about yourself, only to deny you information about others. Release of information about an individual is considered an invasion of privacy if he or she could reasonably object because of its personal nature or its possible adverse effects upon himself or herself or family. Some personal information may not be protected by Exemption 6 if, for example, the injury to the individual is outweighed by a public interest favoring disclosure.

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Other Sources of Information

Consumer's Information Catalog

Published by the General Services Administration's Consumer Information Center (CIC), this comprehensive booklet lists more than 200 free and low-cost Federal booklets on a variety of consumer topics. Single copies are free and may be obtained by writing to *Consumer's Information Catalog*, Pueblo, CO 81009.

U.S. Government Manual

This is the official handbook of the Federal government. Published by the National Archives and Records Administration, it describes the programs in each Federal agency, lists the names of top personnel, the mailing address, and a general information telephone number. It is available in most public libraries or can be purchased for \$36.00 by sending a check or money order to the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. To order by phone, call (202) 512-1800; the stock number is 069-000-00069-0.

The Privacy Act of 1974

This Act gives citizens the right to see files about themselves, subject to its exemptions; to request an amendment if the record is incomplete, untimely, irrelevant, or inaccurate; and the right to sue the government for permitting others to see their files unless specifically permitted by the Act. You may order a copy of the Privacy Act, Public Law 93-579, from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954 for \$2.50. The stock number is 022003-90866-8.

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{Sample FOIA Request Letter} Date

Office of General Counsel
National Geospatial-Intelligence Agency
Attn: OGC, Mail Stop D-10
4600 Sangamore Road
Bethesda, Maryland, 20816-5003

Dear FOIA Specialist:

Under the Freedom of Information Act, 5 U.S.C. Section 552, I am requesting access to, or copies of [identify the records as clearly and specifically as possible].

If there are any fees for copying or searching for the records, I will pay a maximum amount of \$ _____. [Optional: please contact me if fees may exceed this amount.]

If you deny all or any part of this request, please cite each specific exemption you think justifies your refusal to release the information and notify me of appeal procedures available.

Optional: If you have any questions about handling this request, you may telephone me at _____ (home or work phone) or email me at (email address).

Sincerely,

Name
Address

(Please print
your name and
address below
your signature)